

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
WILLOW CREEK BASIN (41N)
PRELIMINARY DECREE

CLAIMANTS: Charles R. McCarter; Stanley L. McCarter

CASE: 41N-0254-R-2022

41N 144606-00
41N 144608-00
41N 144609-00
41N 144615-00
41N 144617-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Willow Creek (Basin 41N) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections.

Claims 41N 144606-00, 41N 144608-00, 41N 144609-00, 41N 144615-00 and 41N 144617-00 were consolidated into Case 41N-0254-R-2022 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41N 144609-00 received the following substantive issue remark:

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM UNNAMED TRIBUTARY OF CROOKED COULEE.

2. On, June 14, 2022, the Court consolidated the above-captioned claims into Water Court Case 41N-0254-R-2022 and set a filing deadline for the Claimants to file information regarding the historically accurate source for claims 41N 144609-00. Nothing was filed by the ordered deadline.

3. Each of the above-captioned claims received notice-type issue remarks during the DNRC's claim reexamination.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the above-listed issue remarks appearing on the claims. Because the Claimants did not respond to the filing deadline, a preponderance of the evidence shows that the source element for 41N 144609 should be modified as described in Finding of Fact No. 1. These modifications resolve the issue remarks, and the issue remarks should be removed from the claims.

2. The notice-type issue remarks appearing on each of the claims served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Charles R. McCarter
549 N Dunkirk Rd.
Shelby, MT 59474-9020

Stanley L. McCarter
1351 Jap Evans Rd.
Shelby, MT 59474

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N

Water Right Number: 41N 144606-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: STANLEY L MCCARTER
1351 JAP EVANS RD
SHELBY, MT 59474

Priority Date: OCTOBER 21, 1909

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF WILLOW CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWSW	24	32N	2E	TOOLE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWSW	24	32N	2E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENWSW	24	32N	2E	TOOLE

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 144608-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: STANLEY L MCCARTER
1351 JAP EVANS RD
SHELBY, MT 59474

Priority Date: DECEMBER 31, 1948

Type of Historical Right: USE

Purpose (use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF CROOKED COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSE	1	32N	1E	TOOLE

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: PIT

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWSE	1	32N	1E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Period of Use: SEPTEMBER 28 TO MARCH 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSWSE	1	32N	1E	TOOLE

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 144609-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: CHARLES R MCCARTER
549 N DUNKIRK RD
SHELBY, MT 59474 9020

Priority Date: DECEMBER 31, 1946

Type of Historical Right: USE

Purpose (use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF CROOKED COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSENE	26	33N	1E	TOOLE

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSENE	26	33N	1E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 28 TO MARCH 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSENE	26	33N	1E	TOOLE

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 144615-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: STANLEY L MCCARTER
1351 JAP EVANS RD
SHELBY, MT 59474

Priority Date: DECEMBER 31, 1940

Type of Historical Right: USE

Purpose (use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF WILLOW CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWNW	25	32N	2E	TOOLE

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: PIT

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENWNW	25	32N	2E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Period of Use: SEPTEMBER 29 TO MARCH 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENWNW	25	32N	2E	TOOLE

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 144617-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: STANLEY L MCCARTER
1351 JAP EVANS RD
SHELBY, MT 59474

Priority Date: DECEMBER 31, 1946

Type of Historical Right: USE

Purpose (use): DOMESTIC

***Flow Rate:** 10.00 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: UNNAMED TRIBUTARY OF CROOKED COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSE	1	32N	1E	TOOLE

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWSE	1	32N	1E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO OCTOBER 19

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		SWSWSE	1	32N	1E	TOOLE
Total:	1.00						